



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention of:

Public Housing Agencies
Public Housing Hub Office Directors
Public Housing Program Center Directors
Regional Directors
Field Office Directors
Resident Management Corporations

Notice PIH 2011-14 (HA)

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Cross Reference:

Subject: Guidelines for Undertaking Financing Unsecured by Public Housing Assets.

I. Background and Introduction

- a. HUD is publishing this Notice with the goal of providing guidance to public housing authorities (PHAs) and others on how to manage compliance with public housing requirements when undertaking a financing that is not secured by public housing assets. Specifically, PHAs may not provide recourse to public housing assets as defined herein to their lender or financier.
- b. This Notice applies to all PHAs that operate public housing.
- c. This Notice provides for certain requirements when pursuing a financing that is not secured by public housing assets, and states guidelines for what HUD requires for those financings, as well as what HUD specifically does not require of the PHAs. To help maintain compliance with public housing requirements, PHAs should review and follow the guidelines provided in this Notice.

II. Requirements and Guidelines for Financing Unsecured by Public Housing Assets, for Modernization or Development Purposes.

- a. **When Proceeds are Used for *Either* Modernization or Development.**
 - i. PHAs, or their affiliates or instrumentalities, that undertake financings that do not pledge or provide a security interest in or otherwise encumber public housing property are not required to obtain HUD approval of such financings pursuant to Section 30 of the United States Housing Act of 1937 (1937 Act) or Section 7 of the Consolidated Annual Contributions Contract (ACC). PHAs are also not required to notify HUD of such financings, however, copies of all financing and supporting documentation are subject to review by HUD and should be kept on file and available. Additionally, PHAs are advised that such financings should be reported to

their Independent Public Accountant for the purpose of completing their annual OMB A-133 or OMB non A-133 audit, as applicable.

ii. Applicable Guidance for the Sources of Repayment.

1. Capital Funds may be used to pay debt service on an unsecured financing, but only where the proceeds of the loan were used for the modernization or development of public housing, and where the financing proceeds were used in conformance with Public Housing requirements. If Capital Funds are used to repay the financing, the use of Capital Funds must be included in a Capital Fund Annual Statement/Performance and Evaluation Report (HUD-50075.1) and Capital Fund Program Five-Year Action Plan (HUD-50075.2).
2. Operating Funds may be used to pay debt service on an unsecured financing, but only where the proceeds of the loan were used for the modernization or development of public housing, and where the financing proceeds were used in conformance with Public Housing requirements. For PHAs that intend to use Operating Funds for the payment of debt service, this use must be incorporated in a budget adopted in conformance with the requirements of 24 CFR Part 990, which governs Operating Subsidy; in the PHA 5-Year and Annual Plan (HUD-50075) for a non-qualified PHA and in the PHA 5-Year Plan for a qualified PHA.

iii. Language for Financial Documents.

1. PHAs that undertake financing unsecured by public housing assets shall include the following non-recourse language in all financing documents:

“This financing is non-recourse to any public housing property (real or personal property including all public housing assets or income), or disposition proceeds approved pursuant to Section 18 of the United States Housing Act of 1937 (unless explicitly permitted by HUD in the Section 18 approval letter.”

If a PHA fails to incorporate this language or otherwise enters into financing which has recourse to public housing assets, the PHA will be considered in violation of the ACC and the 1937 Act and will be subject to all available HUD remedial action. Further, the PHA must keep all public housing property protected by appropriate use restrictions under current and effective Declarations of Trust or Declarations of Restrictive Covenants.

2. PHAs shall include a conflicts provision in relevant financing documents indicating that in the event of a conflict between the financing documents and Applicable Public Housing Requirements, the Applicable Public Housing Requirements shall prevail. Applicable Public Housing Requirements are defined as all requirements applicable to public housing, including the United States Housing Act of 1937, HUD regulations thereunder (including any HUD-approved waivers of such regulations), the Consolidated Annual Contributions Contract and any amendments or riders thereto, the HA's standard public housing admissions and occupancy policies adopted in accordance with federal law and described in the HA's approved Public Housing Agency Annual Plan, or any approved amendment to the Plan for non-Qualified PHAs, or the Five-Year Action Plan for Qualified PHAs, or any contrary provisions in the MTW Agreement, and all other pertinent Federal statutory, executive order, and regulatory requirements, as those requirements may be amended from time to time. This provision is designed to help PHAs maintain compliance with the federal requirements associated with owning and operating public housing, but does not guarantee the HA's compliance. PHAs are still advised to be aware of the risks associated with any type of financing, including those where proceeds are used for modernization or development and public housing funds are used to repay any source of financing.
- iv. Public housing property includes all public housing assets and income, any public housing Project (as the term "Project" is defined in the ACC between the HA and HUD), any Operating Receipts (as the term "Operating receipts and Operating expenditures" is defined in the ACC), Public Housing Capital Funds or Operating Funds, HOPE VI or other development grants and other grants to the HA from HUD under the 1937 Act. PHAs should be aware that certain assets, such as proceeds from the Section 18 disposition of public housing must be used for the purposes specified in Section 18(a)(5) of the 1937 Act.
- v. As certain fee-for-service amounts charged to Asset Management Projects (AMPs) or programs such as the Capital Fund program, and earned by a Central Office Cost Center, are not protected by HUD-mandated non-recourse language, PHAs are advised to negotiate more expansive non-recourse provisions to the extent that they wish to ensure protection to such assets or income. PHAs are further advised that the level of protection provided such assets in agreements entered into by the HA does not impact upon the HA's obligations to fulfill all public housing requirements related to the operation, management, maintenance and development of their public housing.

Contacts: For further information on the applicability of this notice or technical assistance relating to its requirements, contact Nicole Puri at (202) 402-6328 or nicole.d.puri@hud.gov in the Office of Public Housing Investments.

/s/

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